BUSINESS, LABOR & ECONOMIC AFFAIRS
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TESTIMONY IN FAVOR OF HB 65
Before the Senate Business, Labor and Economic Affairs Committee
Jerry Keck, Administrator
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Department of Labor and Industry
March 6, 2007

Madam Chair, members of the committee, for your record my name is Jerry Keck. I am the administrator of the Employment Relations Division in the Department of Labor and Industry. It is my pleasure to appear before you as a proponent of HB 65 which was requested by the Department. We want to thank Rep. Villa for sponsoring the bill.

The Employment Relations Division is charged with implementing a number of the state statutes that affect the employer – employee relationship. One broad area where we have regulatory responsibility is workers' compensation. We are responsible for verifying that employers who are required to have workers' compensation coverage have a policy in place. We issue the independent contractor exemption certificates that verify that certain persons engaged in independent trades, occupations and professions are exempt from the coverage requirements. And we administer the subsequent injury fund that is intended to eliminate concern by an employer when hiring a worker with a disability that there is a higher risk of injury that may affect their workers' compensation premium

HB 65 addresses several issues that the Department has identified in the course of carrying out our responsibilities for these programs.

Section 1 of the bill provides clear authority for the Department to enter a construction site for the purpose of determining that employees are properly covered under a workers' compensation policy and that the independent contractor exemption is being properly utilized. The Department has faced some resistance from construction crews, but the primary problem has been getting access into gated communities. Guards at the gates to these areas are typically instructed to not let anyone in unless they have an appointment. An appointment hinders the ability to investigate possible non-compliant activity.

Section 2 prohibits an insurer from using claim payments that are reimbursed from the Subsequent Injury Fund in the calculation of an employer's experience modification factor. If the payments are used in the calculation, it weakens the incentive for an employer to hire a certified individual that is built into the program.

Section 3 of the bill clarifies the Department's ability to notify insurers that an injured worker is certified under the Subsequent Injury Fund. It also allows an insurer to disclose Subsequent Injury Fund status to an insured employer. With medical privacy rising in importance, the Department would like clear authority on when certification information may be released. EEOC has confirmed this does not violate the federal Americans with Disabilities Act (ADA)..

Section 4 and 6 of the bill limits to $100,000 the amount the Uninsured Employer's Fund will pay in medical benefits on an injury claim. Currently there is no limit on the amount that is paid. The Uninsured Employer's Fund is designed to be a safeguard for injured employees who work for uninsured employers. The Fund pays, subject to its fund balance, the same benefits that an injured worker would be paid if the employer had coverage. The Uninsured Employer's Fund is funded by collection of penalties against employers who fail to provide coverage. The Fund is always one catastrophic claim away from insolvency. A cap on the amount of medical benefits paid on an individual claim will allow payments to be made for the other claims filed with the Uninsured Employers' Fund. Within the past 6 years there have only been 2 claims where more than $100,000 has been paid out in medical benefits on a single claim.

Section 5 was added as a House amendment to clarify that the injured worker would not be personally liable for medical costs in excess of $100,000 that are not paid by the Uninsured Employer's Fund. It also clarifies that the medical provider that is not fully reimbursed may bring an action against the uninsured employer to recover payment for medical services

Section 7 will limit the total reimbursement from the Subsequent Injury Fund to the amount in the Fund and the amount that can be collected through an assessment in the following year. The Subsequent Injury Fund has been set up to be a pay as you go fund for a number of years. That is to say, as money is paid from the Fund, assessments are made to replenish the Fund. Under accounting standards the State is forced to recognize liability as if the Fund was actuarially funded for known and potential claims. The Department does not intend for this change to limit the amount that is paid from the Fund, but only to clarify that the State has no ultimate liability that needs to be accounted for on the books.

Section 8 allows the Department to make an assessment to replenish the amount in the Subsequent Injury Fund when the total assessment equals or exceeds $500,000 rather than the $200,000 currently in statute. Because the amount needed to replenish the Fund is small each year and the assessment mechanism is a surcharge against employer's premium payments, a small employer's assessment surcharge may be only pennies. The accounting for these small amounts can be very burdensome. Delaying the assessment until a larger amount is needed, will not significantly affect the Fund or employers.

Madam Chair, I will try to answer any questions that the committee may have. I urge your support for HB 65 without amendments. Thank you.